

**Docket No.:** 01-0675  
**Bench Date:** 09-04-03  
**Deadline:** N/A

**M E M O R A N D U M**

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**TO:** The Commission

**FROM:** Donald L. Woods, Administrative Law Judge

**DATE:** August 20, 2003

**SUBJECT:** Rural Electric Convenience Cooperative, Co. and Soyland Power Cooperative, Inc.  
-vs-  
Central Illinois Public Service Company (AmerenCIPS)

Complaint pursuant to the Illinois Electric Supplier Act 220 ILCS 30/1 et. seq.

**RECOMMENDATION:** Enter Order Dismissing Complaint.

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On October 30, 2001, Rural Electric Convenience Cooperative Co. ("RECC") and Soyland Power Cooperative, Inc. ("Soyland") filed an 11-count Complaint against Central Illinois Public Service Company ("CIPS") under the Electric Supplier Act ("ESA") 220 ILCS 30/1, *et seq.* RECC's claims were set forth in counts I through VI and Soyland's claims were contained in counts VII through XI. On December 18, 2001, Freeman United Coal Mining Company ("Freeman") filed a Petition to Intervene, which was granted by the Administrative Law Judge on February 26, 2002. On March 12, 2002, Freeman filed its Answer, Affirmative Defense and Counterclaim. On March 13, 2002, CIPS filed an Answer, Affirmative Defense and Counterclaim. On April 26, 2002, RECC filed its Answer to the Affirmative Defenses and Counterclaims of CIPS and Freeman.

RECC's complaint contains 5 claims, all pertaining to service to Freeman's Crown III Mine. They are: (1) Count II – a claim under Section 2 of an existing Service Area Agreement between RECC and CIPS; (2) Count III – a claim under section 5 of the ESA; (3) Count IV – a claim under section 8 of the ESA; (4) Count V – a claim under section 1 of the Service Area Agreement; and (5) Count VI – a claim under section 2 of the Service Area Agreement.

The answers of both CIPS and Freeman included a motion to dismiss Soyland as a party to the case. On May 28, 2002, the Administrative Law Judge ("ALJ") granted the Motions to Dismiss and struck counts VII through XI of the Complaint. On June 18, 2002, Soyland filed a Petition for Interlocutory Review of the ALJ's ruling and also filed a

Petition to Intervene. On June 26, 2002, the ALJ denied Soyland's Petition to Intervene and on July 10, 2002 the Commission denied Soyland's Petition for Interlocutory Review. On August 7, 2002, the Commission denied Soyland's Petition for Interlocutory Review of the denial of its Petition to Intervene.

On December 6, 2002, Freeman filed an Amended Answer and Motion for Summary Judgment ("Motion") on all remaining counts of the Complaint. On January 13, 2003, CIPS filed its Response in Support of the Motion for Summary Judgment; on January 21, 2003, RECC filed its response, and on January 29, 2003, Freeman filed its reply. Thereafter, RECC filed a Rebuttal to New Issues Raised in Freeman's Response and Freeman filed a Reply thereto. The matter is before the Commission on the Motion for Summary Judgment.

Freeman's Motion for Summary Judgment and CIPS' response in support of the motion are based upon principals of *res judicata* stemming from the Commission's previous decision in ESA 187. That proceeding began on July 10, 1978, and involved a dispute between RECC and CIPS, over which electrical supplier would provide electric service to Freeman's Crown III Mine ("Crown III Litigation"). In that order the Commission found that Freeman owned 810 acres of surface area and had acquired the rights to mine approximately 17,500 subsurface acres of coal. The main mine shaft was to be located in Section 1, Township 11, Range 6 West of the third P.M. in Macon County. The mine's anticipated electric load required electricity at 34.5 KV, and its load involved electrically powered mining equipment that was to be part of a continuously moving underground distribution system.

The Commission also found that the proposed mine shaft was in RECC's service area and RECC was serving a customer farming 372 acres on the effective date of the Electrical Supplier Act ("Act"). That service was 240-volt service, which the Commission found to be inadequate to invoke the priority provisions of section 5 of the Act. After weighing the evidence, the Commission decided the case under section 8 of the Act and ordered that CIPS should furnish the 34.5 KV electric service for Freeman's Crown III Mine. The relevant ordering paragraph is as follows:

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Central Illinois Public Service Company be, and it is hereby, authorized to provide electric service at 34.5 KV to the Crown III mine of the Freeman United Coal Mining Company in Section 1, Township 11 North, Range 6 West of the Third Principal Meridian in Macoupin County, Illinois.

The order was entered on February 17, 1982. RECC appealed that decision and the appellate court upheld the Commission in *RECC v. Ill.Com.Com.*, 118 Ill.App.3d 647 (1983). The appellate court rejected RECC's section 5 claim, its claim under par. 1 of the Service Area Agreement, and par. 2 of the Agreement, and it noted that RECC conceded that it did not have a right under section 8 of the Act to serve the Crown III Mine.

The attached order grants Freeman's Motion, finding that the Commission's decision in ESA 187 contemplated service rights to the entire Crown III Mine as it expanded. Because the service rights to the mine were determined in ESA 187, RECC is barred from relitigating the issue under principles of *res judicata*, as those principles have been enunciated by the courts of Illinois. I recommend that the order be entered.

DLW/lw